Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

LAURA A. BROWN and
J. GALE BROWN, *Petitioners*,

v.

FIRST STATE BANK OF HARVARD, FCC NATIONAL BANK, BANK ONE, ROCKFORD, *et al.*, *Respondents*.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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18 pp

QUESTIONS PRESENTED

A. Whether the district court, without congressionally or constitutionally conferred authority and power to exclude and deny a trial by jury of the averments on the merits, used discriminatory judicial discretion beyond constitutional provisions, existing federal laws, and the caselaw to avoid trying petitioners' patent, antitrust, and anticompetitive RICO claims on the merits in opposition to *Conley v. Gibson,* 18 U.S.C. § 3231, and *Foman v. Davis.*

B. Whether Rule 1, FRCP, calling for the Rules to be construed and administered to secure a just, speedy, and inexpensive determination of every action, Rule 15(a), calling for leave to amend a pleading to be freely granted, Rule 38(a), preserving the right to a trial by jury to the parties inviolate, and Rule 39(a), designating a trial by jury of all issues so demanded, are so fundamentally essential to maintaining free and open markets in the public interest and to allowing access to the district courts for trying patent interference and destruction claims, civil antitrust claims, and anticompetitive civil RICO claims, that Rule 8, calling for a short and plain statement, was inappropriately used to swallow up the trying of the patent, antitrust, and anticompetitive RICO issues on the merits in a jury trial.

C. Whether Rule 8 preempts the constitutional declaration in Art. I, § 8, Cl. [8] to "promote the Progress of Science and useful Arts and to secure for limited Times to Inventors the exclusive Right to their Discoveries", creating new precedent that swallows up petitioners' right to a jury trial of international and United States patent issues, civil antitrust claims, anticompetitive civil RICO claims, and patent interference, patent destruction, and patent extortion claims.

D. Whether Rule 8 and the *Colorado River* Abstention Doctrine should be permitted to be so extended by judicial discretion as to supersede Art. I, § 8, Cl. [8], Art. I, § 8, Cl. [3], Art. VI, Cl. [2], the Sherman Anti-Trust Act, the Clayton Act, the RICO Act, 18 U.S.C. § 3231, and Rules 1, 15, 38 and 39, FRCP, to deny petitioners their right to a jury trial on the merits of their civil antitrust claims, anticompetitive civil RICO claims, and patent interference and destruction claims and to deny petitioners their implied right to participate in promoting the Progress of Science and useful Arts and to exercise their exclusive Right to their Discoveries.

E. Whether dismissal with prejudice under Rule 8 and *Colorado River*, thereby denying petitioners a trial by jury of their federal patent, antitrust, and anticompetitive RICO claims on the merits, was inappropriate in the light of this Court's rulings in *Conley v. Gibson, Foman v. Davis, Moses H. Cone Memorial Hospital v. Mercury Construction Corporation,* and *Dairy Queen, Inc. v. Wood.*

F. Whether the Court of Appeals' summary affirmation of the district court, without granting petitioners a second chance to comply with Rule 8, punished petitioners under an overextension of Rule 8 while unjustly rewarding respondents by granting them the continuing means and judicial blessing for respondents to continue with patent interference and destruction of petitioner's future patents and with invasion and control of and interference with petitioners' two existing businesses and three new businesses.

FULL CAPTION CONTAINING A LIST OF ALL PARTIES

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

LAURA A. BROWN and
J. GALE BROWN, *Petitioners*,

v.

FIRST STATE BANK OF HARVARD, SBI ILLINOIS, INC., CASTLE BANCGROUP, INC., RAYMOND A. ANDERSON, LARRY D. BEATY, JAMES V. BOWERS, JOHN W. CASTLE, JOSEPH L. CRABB, ANTHONY DeMAY, HUGH A. DENEEN, ROBERT E. FRITZ, BRENDA GRATZ, MELVIN R. HINTERLONG, KENNETH E. MARTIN, DENNIS R. McCAULEY, JAMES N. McINNES, JAY T. NOLAN, DONNA WAGNER, CALVIN E. WITTMUS, ERNEST A. BASLER, LOUIS P. BRADY, NANCY D. CASTLE, WALTER A. FARLEY, ARMAND A. LEGNER, SANDWICH STATE BANK, CASTLE FINANCE COMPANY, FIRST NATIONAL BANK IN DeKALB, FCC NATIONAL BANK, BANK ONE, ROCKFORD, N.A., PEAT MARWICK & CO. (now KPMG PEAT MARWICK), DONALD E. KILLEEN, GRACE A. KILLEEN, MARI SUE KILLEEN ZMUDA, LAW OFFICES OF LAWRENCE FRIEDMAN, P.C., LAWRENCE FRIEDMAN, TIMOTHY R. YUEILL, and JERRY M. SALZBERG, *Respondents.*

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Laura A. Brown and J. Gale Brown, *Pro Se*, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case and the substantial federal questions pertaining thereto.

OPINIONS BELOW

The court of appeals entered no opinion. The opinion of the district court (App., A4) is unreported.

JURISDICTION

The court of appeals entered its judgment on June 19, 1996 (App., A1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

This case involves Art. I, § 1, Art. I, § 8, Cl. [3], [8] and [18], Art. III, § 2, Cl. [1] and [2], Art. VI, Cl. [2] and [3], and the First Amendment, the Fourth Amendment, the Fifth Amendment, and the Seventh Amendment of the Constitution, 15 U.S.C. §§ 1,2 and 15, 18 U.S.C. § 1951, 18 U.S.C. §§ 1961-1964, 18 U.S.C. 3231, 28 U.S.C. §§ 1337, 1338 and 1400, 42 U.S.C. §§ 1983 and 1985(3), and Rules 1, 7(a), 8, 12(b)(6), 15(a), 38(a), 39(a) and 56 of the Federal Rules of Civil Procedure. The pertinent text is set out in the Appendix.

STATEMENT OF THE CASE

Pro se petitioners came to the district court for a "just, speedy and inexpensive determination" by a jury trial of patent interference and destruction issues, civil antitrust offenses, anticompetitive civil RICO offenses, and civil RICO extortion offenses, over which the Congress under constitutional authority granted exclusive jurisdiction to the district courts and specifically excluded the state courts from jurisdiction.

The Congress, under constitutional authority (Art. VI, Cl. [2]) and statutory authority (28 U.S.C. §§ 1337, 1338 and 1400, and 18 U.S.C.§ 1964) (1) excluded the state courts from jurisdiction over patent issues, civil antitrust offenses, anticompetitive civil RICO offenses, and civil RICO extortion offenses and (2) granted the district courts exclusive jurisdiction and specific authority over these issues.

Despite more than 800 illegal and/or racketeering offenses by respondents, as summarized at page 30, *infra*, and as set forth in petitioners' complaint, including forgery, fraud, misrepresentation, theft by deception, theft and/or larceny, extortion, mail fraud, collusion, conspiracy, patent interference and destruction, the Court of Appeals for the Seventh Circuit would appear to have failed to read petitioners' briefs in a light most favorable to *pro se* petitioners (see *Scheuer v. Rhodes*, 416 U.S. 232,235, 40 L.Ed.2d 90, 94 S.Ct. 1683 (1974)) and summarily affirmed the District Court of Northern Illinois, Western Division, in its dismissal with prejudice under Rule 8, FRCP, and the *Colorado River* Abstention Doctrine, which unilaterally and unconstitutionally deprived petitioners of their constitutional and civil rights by denying them a trial by jury of the patent, antitrust, and anticompetitive RICO offenses on the merits.

The Court of Appeals' summary affirmation of the District Court, in opposition to the plain meaning of Rules 1, 7(a), 8, 12(b)(6), 15, 38, 39 and 56, had the result of a summary judgment without testing the District Court's dismissal with prejudice by Rules 12(b)(6) and 56 or by a jury trial on the merits based on the facts and evidence. Such affirmation had the effect of punishment of petitioners under an overextension of Rule 8 beyond its plain statement and ordinary, contemporary meaning as a rule for compliance, rather than for punishment. Affirmation unjustly rewarded respondents by granting them the continuing means and the blessing of the court's approval for respondents to continue with patent interference and destruction of petitioner's future patents and with invasion and control of and interference with petitioner's two existing businesses and three new businesses and to continue such monopoly control, rather than permitting petitioners a second chance to comply with Rule 8, the district court's requirements being imprecisely defined.[1]

> In antitrust cases, dismissals prior to giving plaintiff opportunity for discovery should be granted very sparingly; action should not be dismissed unless it appears beyond a doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272,1273 (7th Cir. 1983).

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[1]The lack of specificity of the FRCP as to the length of a pleading or length of an individual count is in marked contrast to this Court's clearly defined rule that a petition for writ of certiorari shall not exceed 30 pages (if printed) or 40 pages (if typed on 8½-x 11-inch paper) and the Court of Appeals for the Seventh Circuit's rule that no principal brief shall exceed 14,000 words.

Rule 11, which employs sanctions to ensure compliance with the FRCP, does not suggest such harsh, continuing punishment with control over 100 future patents and control over petitioners' two existing businesses and three new businesses. Moreover, there was and is no need for sanctions because petitioners requested and still request (1) leave to amend their complaint to comply with Rule 8 and (2) to have the averments tried on the merits at a jury trial.

> Dismissal with prejudice of a party's complaint is a harsh sanction to be resorted to only in extreme cases, and is within the court's sound discretion; court must give full regard for severity of the sanction, granting dismissal sparingly and only when less drastic alternatives have been explored. *Jones v. Smith*, 99 F.R.D. 4 (1983).

Pro se petitioners also came before the district court for a "just, speedy and inexpensive determination" by a jury trial of specific constitutional deprivations, civil rights deprivations, and enforcement of their Truth In Lending Act rescissions, the Congress under constitutional authority having granted pendent jurisdiction and parallel authority with the state courts to hear these matters within the district court's authority, since the Rules have apparently merged the issues of law and equity and grant pendent jurisdiction.

> It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The Federal Rules reject the approach that pleading is a game of skill in

> which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48. The Rules themselves provide that they are to be construed "to secure the just speedy, and inexpensive determination of every action." Rule 1. *Foman v. Davis*, 371 U.S. 178, 181-182 (1962).

This Court has more recently affirmed these principles.

> As amended, Rule 1 of the Federal Rules of Civil Procedure states: "These rules...shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." Rule 8(f) says: "All pleadings shall be so construed as to do substantial justice." And Justice Black reminded us, more than 30 years ago, in connection with an order adopting revised Rules of this Court, that the "principal function of procedural rules should be to serve as useful guides to help, not hinder, persons who have a legal right to bring their problems before the courts." 346 U.S. 945, 946 (1954). *Schiavone v. Fortune*, 477 U.S. 21, 27 (1986).

ARGUMENT FOR ALLOWANCE OF THE WRIT

A. Substantial Federal Question Involved

The District Court's exercise of judicial discretion, in refusing to hear issues dealing with patent interference, harassment, hindrance, destruction and extortion, civil antitrust

issues, and anticompetitive RICO offenses, is in direct conflict and at war with petitioners' right to a trial by jury of patent, antitrust, and anticompetitive RICO issues in the district court, the court having personal and subject matter jurisdiction because it is essential to the right of the enforcement of a judgment that it be a valid judgment and not void.

> The Court in Dairy Queen [*Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 8 L.Ed.2d 44, noted 1963, 82 S.Ct. 894 (1962)] made clear that the right to jury trial exists as to any issue that is an element of a claim cognizable at law, even if that legal claim appears to be less significant than the equitable elements of the case. Wright & Miller, *Federal Practice and Procedure: Civil 2d* § 2302.1 at 31.

The District Court's exercise of judicial discretion, in refusing to hear issues dealing with patent interference, harassment, hindrance, destruction and extortion, civil antitrust issues, and anticompetitive RICO offenses, is in direct conflict and at war with the plain meaning expressed in existing Federal Rules of Civil Procedure:

1. Rule 1 – (the "greatest" rule) These rules ... shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

2. Notes on 1993 Amendment to Rule 1

> The purpose of this revision, adding the words "and administered" to the second sentence, is to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or

delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

3. Rule 7(a) – There shall be a complaint and an answer.

4. Rule 12(b)(6)

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading ... except that the following defenses may ... be made by motion: (6) failure to state a claim upon which relief can be granted.

5. Rule 38(a) – The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

6. Rule 39(a) – When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury...

7. Rule 56(b)

A party against whom a claim ... is asserted ... may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

Such abuse of judicial discretion defeats the ends of justice for all, incorporated in Rule 1, the "greatest" rule, in that the Rules are not intended to cover up the more than 800 illegal and/or racketeering offenses by respondents, at 30, *infra*.

The District Court's exercise of judicial discretion, in dismissing petitioners' amended complaint with prejudice and refusing petitioners leave to amend their complaint to comply

with Rule 8, is in direct conflict and at war with the plain meaning expressed in this Court's decisions:

1. *Conley v. Gibson*, 355 U.S. 41, 2 L.Ed.2d 80, 78 S.Ct. 99 (1957) (A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief).

2. *Foman v, Davis*, 371 U.S. 178, 83 S.Ct. 227 (1962) (It is contrary to spirit of [FRCP] for decisions on the merits to be avoided on basis of mere technicalities. Leave to amend should be freely given.)

3. *Moses H. Cone Memorial Hospital v. Mercury Construction Corporation,* 460 U.S. 1, L.Ed.2d 765, 103 S.Ct. 927 (1983)

> After Cone, there will be rare cases in which "exceptional circumstances" will exist justifying stay or dismissal because of a concurrent state proceeding, but in most cases neither stay nor dismissal will be proper and the federal court will be obliged to exercise its jurisdiction. Wright & Miller, *Federal Practice and Procedure: Civil 2d*, § 4247, 149.

4. *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229, 106 L.Ed.2d 195, 109 S.Ct. 2893 (1989) (The dismissal of a complaint may be affirmed only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations).

5. *Scheuer v. Rhodes* (The district court had a duty to construe all allegations of the complaint in the light most favorable to the plaintiffs).

6. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 94 L.Ed. 2d 434, 107 S.Ct. 1207 (1987) (Judges interpret laws rather than reconstruct legislators' intentions. Where the

language of those laws is clear, we are not free to replace it with an unenacted legislative intent.)(Scalia, J., concurring in the judgment).

The District Court's exercise of judicial discretion, in refusing to hear issues dealing with patents, civil antitrust issues, and anticompetitive RICO offenses, is in direct conflict and at war with the plain meaning expressed in existing Federal laws, as stated under "Constitutional Provisions, Statutes, And Rules Involved" at 1, *supra.*

The District Court's exercise of judicial discretion, in refusing to hear issues dealing with patent interference, harassment, hindrance, destruction and extortion, civil antitrust issues, and anticompetitive RICO offenses, is in direct conflict with the plain meaning expressed in the Constitution:

1. Art. I, § 1 - All legislative Powers herein granted shall be vested in a Congress of the United States ... – the Powers are not intended to be superseded by the *Colorado River* Abstention Doctrine or by overextensions of Rule 8.

2. Art. I, § 8, Cl. [3] - The Congress shall have Power To regulate commerce with foreign Nations, and among the several States ... – without denying petitioners access to the district court for anticompetitive claims relating to their U.S. patents and patents granted under a treaty with foreign nations (Patent Cooperation Treaty) and relating to petitioners' two existing businesses and three new businesses.

3. Art. I, § 8, Cl. [8] - The Congress shall have Power To promote the Progress of Science and useful Arts...– whereby inventors have an implied right to participate in promoting the Progress of Science and useful Arts and to participate in manufacturing, marketing, selling, and distributing their patented products within the meaning of Art.

I, § 8, Cl. [3], applicable antitrust and racketeering laws, and other existing federal laws, and access to the district court for trying the issues on the merits..

4. Art. I, § 8, Cl. [8] - by securing for limited Times to ... Inventors the exclusive Right to their ... Discoveries – without seizure by an arm of the Government, through judicial inaction, in response to respondents' demands.

5. Art. I, § 8, Cl. [18]

> The Congress shall have Power To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof

without having those laws swallowed up by the *Colorado River* Abstention Doctrine and by overextensions of Rule 8.

6. Art. III, § 2, Cl. [1] - The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority – without the judicial Power being swallowed up by the *Colorado River* Abstention Doctrine and an overextension of Rule 8 to deny petitioners a trial by jury.

7. Art. III, § 2, Cl. [2] - The supreme Court shall have appellate Jurisdiction, both as to Law and Fact ... and under such Regulations as the Congress shall make – without the jurisdiction conferred by Acts of Congress being swallowed by the *Colorado River* Abstention Doctrine and by Rule 8 to deny petitioners a trial by jury of the averments on the merits.

8. Art. VI, Cl. [2]

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall

be made, under the authority of the United States, shall be the supreme Law of the Land – without fundamental, constitutionally conferred rights and substantial federal laws being swallowed up by the inappropriate application of the *Colorado River* Abstention Doctrine and Rule 8.

9. Art. VI, Cl. [3] - all ... judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution – in this case, to support Art. I, § 8, Cl. [8] to promote the Progress of Science and useful Arts, in the district court's exercise of its discretion without swallowing up constitutional provisions.

The District Court's exercise of judicial discretion, in refusing to hear issues dealing with patent interference, harassment, hindrance, destruction and extortion, civil antitrust issues, and anticompetitive RICO offenses, is in direct conflict and at war with the plain meaning expressed in the Amendments to the Constitution:

1. First Amendment - Congress shall make no law abridging the freedom of speech [and expression] – permitting inventors to participate in promoting the Progress of Science and useful Arts and to exercise their exclusive Rights.

2. Fourth Amendment - The right of the people to be secure in their ... papers, and effects, against unreasonable ... seizures, shall not be violated... – by covering up, through judicial inaction, respondents' conspiring to carry out patent interference, harassment, hindrance, destruction and extortion to prevent petitioner inventor's exercise of his exclusive Right to his Discoveries and to be secure in his papers and effects against unreasonable destructive seizures of his personal property.

3. Fifth Amendment - nor shall private property be

taken for public use, without just compensation – by permitting, through judicial inaction, petitioner's future patents to continue to be destroyed, thereby depriving inventor of his exclusive Right to this Discoveries and permitting inventor's competitors and the public unlimited and uninhibited use of inventor's Discoveries during the otherwise protected 17-year life of his patents, nullifying petitioners' 30-year, $5,900,000 investment in research, development, and patents.

4. Seventh Amendment - In Suits at common law ... the right of trial by jury shall be preserved – without being swallowed up by the inappropriate application of the *Colorado River* Abstention Doctrine and Rule 8 to deny access to petitioners for trying on the merits respondents' more than 800 illegal and/or racketeering offenses, at 30, *infra*.

The District Court's exercise of judicial discretion is in direct conflict and at war with petitioners' right to a trial by jury of civil rights issues in district court.

> 42 U.S.C. § 1983. **Civil action for deprivation of rights.** Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The deprivation of inventor's right to participate in promoting the Progress of Science and useful Arts and to exercise his exclusive Right to his Discoveries is within the

meaning of the "rights, privileges, or immunities secured by the Constitution and laws".

The District Court's exercise of judicial discretion, in dismissing petitioners' complaint with prejudice, and the Seventh Circuit's affirmation is in direct conflict and at war with previous Seventh Circuit decisions:

1. *GCIU Employer Retirement Fund v. Chicago Tribune Co.*, 8 F.3d 1195 (7th Cir. 1993) (Drastic nature of dismissal with prejudice requires action to be used only in extreme situations where there is clear record of delay or contuma[c]ious conduct, or when other less drastic sanctions have proven unavail[ing]).

2. *Illinois Migrant Council v. Campbell Soup Company, 519 F.2d 391 (7th Cir. 1975) (*District Court erred, when acting upon motion to dismiss complaint, in reading complaint as narrowly as possible and in drawing every inference adverse to plaintiff's claim).

3. *Leo Feist v. Young*, 138 F.2d 972,974-975 (7th Cir. 1943)

> This court has forcefully opposed depriving a party of his intellectual property by judicial inaction. By refusing to grant plaintiff's prayer, the District Court not only deprived plaintiff of its copyright, but in effect gave judicial blessing to defendant's confiscation of it.

In the light of the above, petitioners respectfully request that this Court reverse and remand the ruling of the Court of Appeals for the Seventh Circuit, granting petitioners

(1) Leave to amend their complaint to comply with Rule 8, and

(2) A trial by jury of the issues of law and equity relating to the destruction of petitioner's United States and international patents obtained under the Patent Cooperation Treaty and international agreements and the antitrust and anticompetitive RICO offenses related thereto.

B. Scarcity of Information and Patents

Competitive incentives overcome the scarcity of information and lack of technological advances by stimulating inventors to apply for patents for new applications of science and technology resulting from their research, thereby undergirding our free and open political, judicial, and economic systems to maintain national progress and stability.

What does the Constitution say about promoting the Progress of Science and useful Arts? What do existing federal laws say about protecting an inventor's exclusive Right to his patents by granting him access to the district courts as mandated by the Congress? What does our 200-year history say about performance of inventions by U.S. citizens in promoting free and open markets worldwide for the public good and prosperity of all?

If each of the above questions is considered objectively, it can be seen that the District Court, however inadvertently, abused its discretion by imputing to petitioners motivations which were not theirs, but were the imaginings of respondents to cover up respondents' more than 800 illegal and/or racketeering offenses. (See App. A7, seventh sentence - Memorandum Opinion and Order.) A close reading shows that the district court's opinion would not appear to square with reading in a light most favorable to the petitioners a *pro*

se complaint dealing with patent interference, harassment, hindrance and destruction, civil antitrust offenses, anticompetitive RICO offenses, and civil RICO extortion offenses, in the interests of achieving equality of accessibility to federal courts, equality of justice, and equality in applicability of Rules 1, 7(a), 8, 12(b)(6), 15, 38, 39 and 56. Moreover, the opinion did not even mention petitioner's patents, the destruction of which was the main cause of the substantial damages to petitioners. Thus, the district court has ridden rough shod over the plain language of the Constitution, existing federal and state laws, the overwhelming preponderance of cases, 822 at last count, following this Court's ruling in *Conley v. Gibson*, this Court's firm ruling in *Foman v. Davis* that decisions on the merits are not to be avoided on the basis of mere technicalities in pleading, and just plain common sense.

A great portion of our prosperity and blessings in the material world is tied to information, ideas, innovation, and inventions. The Creator endowed mankind with the opportunity to promote Science and useful Arts to bring prosperity and blessing through inventions, words, and writing, thereby promoting the general welfare. The framers, in a leap of faith, seized the opportunity to harness creativity and innovation by promoting Science and useful Arts. The framers, in this leap of faith, wrote in plain language to empower the Congress with the authority to

1. Promote the Progress of Science and useful Arts. Art. I, § 8, Cl. [8].

2. Securing to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. Art. I, § 8, Cl.[8].

3. To create a Judicial System of inferior Courts

for cases arising under the Constitution, the Laws of the United States, and Treaties made under their Authority (Art. III, § 2 and Art. VI, Cl. [2]), whereby the judges swear to uphold the Constitution and Federal laws.

4. To designate the courts to which Inventors and Authors may bring their intellectual property claims.

The framers' plainly directed the Congress to promote Science and useful Arts, laying the foundation for more than 200 years of free and open markets and the freedom to creatively invent, write and express ideas. It would appear that judicial discrimination applied against a *pro se* inventor, preventing his obtaining justice on his patent, antitrust, and anticompetitive RICO claims, is unconstitutional and opposes Congress' authority to designate the district courts and courts of appeal for hearing such issues and for granting access to the district courts for a jury trial of the averments on the merits.

The framers were careful to make provision for a patent system in the Constitution. If no inventions of note had been produced, the matter would be a dead issue. The United States has been blessed with 200 years of creative Edisons, basement and attic inventors. Garage inventors, innovators and entrepreneurs created Hewlett-Packard, Apple, and Motorola. Petitioners are basement, attic and barn inventors.

This nation has been blessed with massive creative research and development efforts invested in by corporate and academic America. All have contributed to the very fabric of the industrial, technical, and inventive might of this nation. The result is the best creativity, innovation and invention system in the world, comprising basement, attic, garage, barn, university, private business, state, and federal inventors, innovators and entrepreneurs. The system works because we

have let free and open markets determine the inventor's, innovator's and entrepreneur's rewards.

This free and open market will continue to exist only as long as the courts allow an inventor to come before the district courts to try his claims of patent interference, harassment, hindrance, destruction and extortion, antitrust offenses, and anticompetitive RICO offenses since patents are granted only to individuals and not to corporations.

The U.S. Patent Office, under congressional authority, is charged with the duty to assist *pro se* inventors in the preparation and prosecution of their patent applications. To have one arm of the Government give assistance and encouragement to a *pro se* inventor in obtaining a patent and then have another arm of the Government view with indifference and discriminate against the inventor by effectively denying access to the district court is to reward respondents for patent interference, harassment, hindrance, destruction and extortion and to ultimately discourage inventors in continuing to provide a scarce commodity. The resulting negative impact on the American economy over the destruction of any inventor's personal property and, in particular, petitioner inventor's personal property, his patents, makes neither administrative nor judicial sense in the light of the 1993 Amendment to Rule 1 at 6, *supra*.

It has taken petitioners anywhere from 3 to 8 years to secure each of petitioner's U.S. and international patents. For a *pro se* inventor, those 3 to 8 years, multiplied by the number of patents he has secured, represent time he could have been doing other productive work. The net result of the wholesale destruction of petitioners' life's work, by judicial inaction, is to interfere with and hinder petitioners in the use of their

patents and to prevent petitioners from working on the future patent applications for more than 100 inventions petitioner inventor has been developing over the past 30 years and in which petitioners have invested $5,900,000.

Just as neither the public nor the courts will tolerate or stand by unprotesting when a child is killed, the destruction of patents, which are the "children" of the inventor and eventually of the public at the expiration of the patent, should not be tolerated by the judicial system. Since the patent laws are designed to induce innovations that would not otherwise appear in a competitive system, as stated by Edmund W. Kitch (1966 S.Ct.Rev. 293, 341), petitioner's patents for new products create a need for "new" equipment and "new" industry to manufacture them. All "new" products and "new" equipment start as an inventor's fragile, "new child" which is very vulnerable to respondents' patent interference, harassment, hindrance, destruction and extortion schemes, requiring in certain instances access to courts designated by Congress to hear patent and anticompetitive claims. It would appear to be inappropriate for the continuing conduct of respondents in engaging in patent interference, harassment, hindrance, destruction, and extortion to receive judicial blessing by the inaction of the district court and by the court's denying the inventor access to the court to try the averments on the merits.

C. Patents And Economics – Promoting The Public Good

Respondents initiated their inequitable conduct of acts of conspiracy, forgery, fraud, misrepresentation, and theft by deception against petitioner's personal property, which caused the destruction of 9 patents, 6 years after petitioner filed his first patent application in 1980 and even more years after he

first initiated the research leading to certain of his inventions.

Respondents have continued wilful, malicious patent interference with and destruction of 9 of petitioner J. Gale Brown's 11 patents. Five patents had been destroyed by the time petitioners filed their complaint in district court. Respondents have wilfully, maliciously continued such patent interference and destruction. Two additional patents were destroyed prior to the district court's dismissal with prejudice, and two additional patents were destroyed during the appeal to the Seventh Circuit, despite the Seventh Circuit's ruling in *Leo Feist v. Young*, 138 F.2d 972,974-975 (7th Cir. 1943):

> This court has forcefully opposed depriving a party of his intellectual property by judicial inaction. By refusing to grant plaintiff's prayer, the District Court not only deprived plaintiff of its copyright, but in effect gave judicial blessing to defendant's confiscation of it. Since equity seeks above all else to do justice, we cannot agree that a court should supinely sit by while such unlawful appropriation occurs ... by the court's inaction, defendant's violation of the copyright statute was sanctioned and the unethical appropriation was approved ... In our view, a rule of equity should never be applied if its application results in injustice, which would result here if plaintiff were not allowed to enforce its congressionally bestowed right to prevent unauthorized use of its copyright.

Patent laws have incorrectly been regarded as complex and confusing, stimulating this Court to view with disfavor the

granting of certiorari for patent cases, likely against the public interest. As John W. Schlicher states in *Patent Law: Legal and Economic Principles*, Release #3, September 1995:

> Patent law exists to improve the American economy. Patent law developed over the past 200 years was based on its perceived economic effects. At 1-2.
>
> Without patents, markets will not provide the right incentives to produce information. Patent law permits technological information to be owned in order to assist markets for information to operate efficiently. The central assumption of patent law is that those incentives will be economically wasteful if not corrected by patents. The exclusive rights are assigned for a limited time to achieve a proper long run balance between incentives to produce information and incentives to use that information. At 1-1 and 1-2.

Patent law is essentially a type of property law. *Id.* at 1-6. This petition is made from the perspective that the purpose of patent law is to further the public good as envisioned by the framers in free and open markets by promoting Science and useful Arts in the public interest. (App. B1, a).

> In the United States, most resources are used in the manner directed by markets. We rely on markets rather than government planners to decide how our scarce resources will be used. Markets direct particular scarce resources to particular uses by particular people at particular

> times in particular places. Countries that relied for years on government planners to do that job have recently acknowledged that markets do it much better. *Id.* at 1-3. (NOTE: "*Id*" hereafter refers to Schlicher's *Patent Law*).
>
> The patent idea has two parts. One, an economy controlled by market forces rather than government depends on private incentives and initiative to produce the right amounts of the right kinds of goods. Two, a market economy will not provide adequate incentives to produce technical information, unless the law provides patent rights. An economy that fails to produce that information will fail to grow at the rate it should. Better products and cheaper processes will arrive too slowly or will not arrive at all. America's resources will be wasted. Exclusive rights are granted to adjust the incentives to produce inventions and avoid that waste. *Id.* At viii.

The economics and law approach to patent law is a tool for the public good.

> There is and always has been general agreement that patent law exists to improve the performance of the American economy. The Constitution made that clear enough. (App., B2, b). Patent law does not exist because inventors somehow naturally ought to have these rights. Patent law does not exist because inventors have more political clout than invention users and have used their political

> power to shift income from users to inventors in a well-disguised inventor "welfare" system. Rather, patent law exists to provide a solution to a fundamental problem for free market economies in producing the right amount and types of technical information. *Id.* at ix.

Promoting the Progress of Science and useful Arts at times requires the Judicial Branch to participate therein by providing access to the court system by *pro se* inventors, thereby protecting from erosion, petitioners' right to manufacture, market, sell, and distribute their patented products, the economy of the United States, and the patent system.

> Technical information is scarce. There was a scarcity of information about the causes of bubonic plague in the 1300s that contributed to the deaths of one quarter of the people of Europe. There was a shortage of information about bacterial pneumonia and antibiotics before the 1940s that [led] to the deaths of about one-third of people who contracted that common disease. The scarcity of technical information demands that resources needed to create it not be wasted in less valuable uses. *Id.* a 1-2.

In the past five centuries, there was a scarcity of information on sanitation, cooking, heating. The advent of indoor plumbing, electricity, central heating and airconditioning, insulating glass, electric and gas stoves, washing machines and dryers added convenience in the home.

In the 20th century there was a scarcity of information

on how to communicate, how to travel, how to automate business operations. The invention of the radio, television, the transistor, the mainframe computer, the integrated circuit, the pocket calculator, the microprocessor, the personal computer, satellites, fiber optics, and high definition television have led to an explosion of information and knowledge. The invention of the dirigible, the airplane, the jet engine, and the helicopter has increased our transportation options. Xerography, laser printing, and the assembly line have changed our way of doing business and of producing goods.

These technological advances, fueled by economic incentives provided by the patent system, have led to greater productivity, improved quality, greater competition, lower price, and widespread consumption of the products invented.

> For example, a market economy depends on laws establishing and enforcing ownership of scarce resources. Someone wishing to use any scarce resource must first obtain the permission of its owner. *Id.* at 1-3.

Past and current patent laws in the United States have allowed the marketplace to regulate the introduction of new ideas. This case is about continuing free and open markets by continuing to allow the petitioner inventor access to the district courts by allowing a *pro se* inventor to amend his complaint and granting him a jury trial of the patent interference, harassment, hindrance, destruction, and extortion, the antitrust and anticompetitive RICO offenses, rather than permitting the respondents to use Rule 8 and the *Colorado River* Abstention Doctrine to cover up the acts of fraud, deceit, misrepresentation, collusion, theft by deception, conspiracy to carry out extortion engaged in by respondents.

> The United States Patent and Trademark Office (or "Patent Office") is the agency of the federal government whose duty it is to see that [the] requirements for patentability are met before patents are granted. *Id.* at 1-12.

The judicial system, created by the Congress under constitutional authority (Art. III and Art. VI, Cl. [2]), is the branch of the United States Government whose duty it is to grant access to inventors for trying patent issues.

Each of the United States Patents granted to petitioner states on its cover, the following:

> **The Commissioner of Patents and Trademarks**
>
> *Has received an application for a patent for a new and useful invention. The title and description of the invention are enclosed. The requirements of law have been complied with, and it has been determined that a patent on the invention shall be granted under the law.*
>
> *Therefore, this*
>
> **United States Patent**
>
> *Grants to the person or person having title to this patent the right to exclude others from making, using or selling the invention throughout the United States of America for the term of seventeen years from the date of this patent, subject to the payment of maintenance*

fees as provided by law.

Moreover, the international patents issued or granted to petitioner state virtually the same thing. See, e.g., text of petitioner's Australian Patent No. 591633 (App., C1).

Access to the court system by a *pro se* inventor is an important means of furthering the invention system and improving the economy towards encouraging the 21st century Bells, Edisons, Telsas, Wrights, Hewletts, Packards, Galvins, and Jobs and corporate giants IBM, General Motors, and General Electric in their endeavors. Thus, it is essential to enforce patent and antitrust issues as they apply to petitioners by allowing them access to the district court, free from discriminatory application of judicial discretion, and to permit the marketplace to determine the value of petitioner's remaining current patents and more than 100 future patents.

> Markets operate within the confines of available technology. All production and consumption decisions are influenced by the existing state of technology. All demand and supply conditions are limited by the available technical alternatives for products and manufacturing processes. Changes in technology alter demand and supply conditions. Patent law seeks to improve the rate and direction of technical change. *Id.* at 1-3.

Therefore, access to the district courts by a *pro se* inventor is essential to maintaining the rate and direction of technical change as determined by free and open markets.

Inventions are information about new products

> and new processes potentially useful in the economy. The patent system provides this right to increase the incentives for inventors to produce patentable inventions. The patent system recognizes that people would spend too little of their time and invest too little of their money creating new information about new products and processes, if they had not rights to prevent others from using the information and capturing all or part of its value. *Id.* at 1-10.

The scarcity of technical information requires a court system which upholds the judicial branch's duty to promote the Progress of Science and useful Arts" without discriminating against *pro se* inventors by maintaining the inventor's access to the district courts to try the patent interference, harassment, hindrance, destruction and extortion averments of this case. Art. I, § 8, Cl. [8] and [3].

> What does granting exclusive rights to inventors have in common with providing national defense, punishment for piracy, roads, a medium of exchange, and trial courts to administer justice. The answer is that if the government does not take some action, the country is likely to have a shortage of inventions, national defense, law enforcement on the oceans, roads, sound money and courts. *Id.* at viii.

If we sacrifice all future *pro se* inventors' rights to an opponent's allegations that the inventor's appeal is trivial, frivolous or moot, as certain respondents alleged in petitioners' appeal to the Court of Appeals for the Seventh Circuit, when the destruction of 5 or 7 or 9 patents can in no way be

considered trivial, frivolous or moot, a precedent is set for discrimination against *pro se* inventors, excluding such people as the 21st century Bells, Edisons, Wrights, Telsas, Hewletts, Packards, Galvins, and Jobs in opposition to the plain language of the Constitution to "promote the Progress of Science and useful Arts", thereby substituting judicial discretion for constitutional provisions and setting aside the Congress' authority to determine which courts shall try cases involving the anticompetitive destruction of patents. (App., B2, c).

> One more purpose of patent law requires consideration: the dominant purpose of them all, the purpose of encouraging innovation by rewarding it. Advances in technology are not born market-ready. *Matter of Mahurkar Double Lumen Litig.*, 831 F.Supp. 1354, 1370 (N.D. Ill. 1993).

D. Plain Meaning Of The Laws, Rule 8, And The *Colorado River* Abstention Doctrine

Since all citizens are required to know the law and to abide by existing laws, it would appear that the laws must be stated in plain language understandable to all ordinary citizens.

Discretionary judicial interpretation beyond the plain meaning stated in the laws and Rule 8 provides irrational results founded upon requirements not knowable by ordinary citizens. Judicial discretion, converting Rule 8 from a compliance rule to a punishment rule, creates results prejudicial to, circumventing, and defeating the ends of justice accessible to all under the Constitution, under knowable laws passed by Congress and knowable Rules created by this Court and passed by Congress to achieve the objective of Rule 1 that

the rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action," and as stated in Rule 15, that "leave [to amend the party's pleading] shall be freely given when justice so requires."

> For purposes of federal rule requiring short and plain statement of claims, appropriate length and complexity of complaint will vary with each case. Eighty page complaint was not defective for failure to contain short and plain statement of claims, where five plaintiffs were raising 13 separate claims against 15 separate defendants. *Morgan v. Kobrin Securities, Inc.*, 649 F.Supp. 1023 (N.D.Ill., E.D. 1986).

In the instant case, three plaintiffs raised 41 separate claims against 37 separate defendants, pointing to a longer complaint than found acceptable by the *Morgan* court.

An ordinary citizen could not obey the law if the law were subject to discretionary judicial interpretation beyond what the law says and its ordinary, contemporary meaning.

> In applying Rule 8 on a motion to dismiss, the rules require the court must take account of the "nature of the action, the relief sought, and the respective positions of the parties in terms of the availability of information and a number of other pragmatic matters." (citations omitted) The plaintiffs in this action are alleging the violation of numerous provisions in the federal laws, which are complex in their application. This makes "concise" pleading difficult. Further, the plaintiffs are alleging violations by

> four different defendants each performing functions distinct in some measure from the rest. The allegations are asserted in an organized if not concise fashion ... What verbosity and repetition appears in the complaint does not, standing alone, justify dismissal under Rule 8 ... Where the defendant is sufficiently informed of the misconduct of which he is charged, dismissal on grounds of technical non-compliance is inappropriate. *Kaufman v. Magid,* 538 F.Supp. 1088 (D.C. Mass. 1982).

Petitioners are at a disadvantage when discretionary judicial interpretation prejudices and discriminates against petitioners' right to a trial by jury of the patent and antitrust averments on the merits. Arbitrary, discretionary judicial interpretation for punishment of petitioners or for protection of respondents, rather than to obtain compliance with Rule 8 by granting petitioners a second chance to amend their complaint within the plain meaning of Rule 15, which states that "a party may amend the party's pleading only by leave of court ... and leave shall be freely given when justice so requires," directly opposes Rule 1. The granting of a trial by jury of the averments on the merits squares well with Rule 1.

> On motion to dismiss, the facts alleged in complaint are to be taken as true and the motion should not be granted unless plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Murphy v. Wheaton*, 381 F.Supp. 1252, 1253 (1974).

It would appear that punishment and compliance are accomplished by the application of sanctions under Rule 11.

Rule 8 would appear to have been written to obtain compliance and to aid petitioners in stating their complaint and not for the purpose of aiding respondents in covering up their more than 800 offenses. Petitioners sought in their appeal below only the opportunity to amend their pleading a second time after the district court's having reviewed their complaint a second time and to have a trial by jury on the merits.

> Framers of these rules did not intend that ... this rule relating to pleadings generally should be used by one party to hide from adversary and the court the real issues ultimately to be tried. *Walling v. West Virginia Pulp & Paper Co.*, D.C.S.C., 1942, 2 F.R.D. 416.

The district court declined to apply sanctions against petitioners. The failure of the District Court and the Court of Appeals for the Seventh Circuit to reasonably apply within their relative importance Rules 1, 7(a), 8, 12(b)(6), 15, 38 and 39 within their plain meanings impedes the understandability of the law and the Rules to the ordinary citizen and would appear to be in opposition to consistent public policy which does not exist to discriminate against ordinary citizens, such as, *pro se* petitioners and inventors, and to reward respondents with a cover-up of the more than 800 illegal and/or racketeering offenses, including 60 incidents of mail fraud, 133 incidents of wire fraud, 132 incidents of interstate travel, 9 incidents of bank fraud, 64 schemes or artifices to defraud, 71 incidents of frauds and swindles, multiple incidents of extortion and conspiracy and other multiple unlawful activities comprising at least 61 incidents of forgery, 6 incidents of duress and coercion, 4 incidents of theft by deception, 4 incidents of theft and/or larceny, 4 incidents of deception, and 8 incidents of extortion by forgery, etc.

It would appear that Rule 8 was not intended to supersede the Congress' constitutionally derived authority to specifically designate that patent interference and destruction, civil antitrust offenses, anticompetitive civil RICO offenses, and civil RICO extortion offenses should be tried in the district courts, exclusive of being tried in the courts of the States. 28 U.S.C. §§ 1337, 1338 and 1400 and 18 U.S.C. § 3231. Nor was Rule 8 intended to swallow up Rule 1 by depriving citizens of a properly demanded trial by jury on the merits in district court of federal patent, antitrust, and RICO claims.

> On motion to dismiss, complaint must be viewed in light most favorable to plaintiff and should not be dismissed unless it appears to a certainty that plaintiff would not be entitled to relief under any state of facts which could be proved in support of his claim, and no matter how likely it may seem that pleader would be unable to prove his case, he is entitled, on averring a claim, to an opportunity to prove it. *Melo-Sonic Corporation v. Crop*, 342 F.2d 856 (3d Cir. 1965).

This Court has supported Rule 1 over other Rules in prior rulings.

> In the absence of a direct expression by Congress of its intent to depart from the usual course of trying "all suits of a civil nature" under the Rules established for that purpose (*Califano v. Yamasaki, (1979),* 442 U.S. 682,700, 99 S.Ct. 2545,2557*)* [Rule 8], like all of the Federal Rules of Civil Procedure, are subject to the injunction of Rule 1 that they "be

> construed to secure the just, *speedy*, and *inexpensive* determination of every action." (emphasis in the original). *Herbert v. Lando*, 441 U.S. 153,177, 60 L.Ed.2d 115, 99 S.Ct. 1635,1649(1979).

In the instant case, therefore, it would appear that judicial discretion should not to be used to punish petitioners by unreasonably extending Rule 8 beyond its plain meaning, thereby swallowing up the plain meaning of Rules 1, 7(a), 11, 12(b)(6), 15, 38, 39 and 56, while also rewarding respondents with the enabling means for continuing conduct of future patent interference, patent destruction, and invasion of and control over petitioners' 5 new and existing businesses and to avoid trying on the merits in the district court the patent interference and destruction, civil antitrust offenses, anticompetitive civil RICO offenses, and civil RICO extortion offenses in opposition to what the Congress has decreed under constitutional authority.

> [I]t is noteworthy that Rule 8(a), which calls for a short and plain statement of a claim, establishes two interrelated aspects of notice pleading: conciseness and understandability. Neither of these requirements should be overemphasized or applied to the exclusion of the other; rather, they should be read together and applied with due regard for the nature of the case at hand. Thus, in potentially complicated litigation, and particularly in cases involving violations of the antitrust laws, a claimant should go beyond the "short" requirements of Rule 8 if that is necessary to set forth a "plain" or understandable claim.

Essex International, Inc., v. Industra Products, Inc., 64 F.R.D. 361 (1974).

It would appear that the *Colorado River* Abstention Doctrine was not intended to supersede Congress' constitutionally derived authority to specifically designate that patent interference and destruction, civil antitrust offenses, anticompetitive civil RICO offenses, and civil RICO extortion offenses should be tried in the district courts, exclusive of trying of these issues in the courts of the States.

> *Colorado River* abstention was not appropriate in employer's action against union for Racketeer Influenced and Corrupt Organizations Act (RICO) violations, despite existence of suit by employer against union in state court for injunctive relief; employer sought compensation in federal court and equitable relief in state court, and state suit sought remedies for violations of West Virginia criminal law, while RICO action was based on predicate acts that allegedly violated criminal laws of Kentucky and Virginia as well. *New Beckley Min. v. International Union, UMWA*, 946 F.2d 1072 (4th Cir. 1991).

Since petitioners' claims in the instant case had nothing to do with the case pending in the state court, and only 3 of the 16 parties in the state court case are included in and common to the 40 parties in the district court case, it would appear that the district court had no basis for dismissing the case with prejudice under *Colorado River*.

This Court has held that the decision to invoke

Colorado River necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case, whether it stays or dismisses. *Moses H. Cone Memorial Hospital v. Mercury Construction Corporation*, 1983, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed. 2d 765.

> The Court then examined two factors that had not been discussed in Colorado River [*Colorado River Water Cons. Dist. V. U.S.*, 424 U.S. 800, 47 L.Ed.2d 483, 96 S.Ct. 1236 (1976)]. It thought it significant that in the Cone case federal law, in the form of the United States Arbitration Act, would provide the rule of decision on the merits. Even though state and federal courts have concurrent jurisdiction to enforce that statute, the Court thought the existence of this federal-law issue was a major argument against staying the federal action in favor of the state court...
>
> After Cone there will be rare cases in which "exceptional circumstances" will exist justifying stay or dismissal because of a concurrent state proceeding, (citations omitted) but in most cases neither stay nor dismissal will be proper and the federal court will be obliged to exercise its jurisdiction. Wright & Miller, *Federal Practice and Procedure: Civil 2d*, Section 4247, at 149.

It would appear that judicial discretion to interpose the *Colorado River* Abstention Doctrine as a reason to supersede the Congress' authority in order to dismiss with prejudice the trying of these federal issues on the merits is in direct

opposition to the Constitution and the Congress' authority to clearly designate that patent issues, civil antitrust offenses, anticompetitive civil RICO offenses, and civil RICO extortion offenses are to be tried in the district courts, exclusive of trying these federal issues in the State courts.

> "[A]bstention 'does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise.'" *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 416 (1964), quoting from *Harrison v. NAACP*, 360 U.S. 167, 177 (1959). For that reason, we have held that a dismissal on grounds of abstention so as to permit a state court to pass on an issue of state law must not be with prejudice. *Doud v. Hodge*, 350 U.S. 485 (1956); *Lake Carriers' Assn. v. MacMullan*, 406 U.S. 498 (1972). The proper course is for the District court to retain jurisdiction pending the proceedings in the state courts. *Lake Carriers' Assn.* v. *MacMullen*, *supra,* at 512-513; *Zwickler v. Koota*, 389 U.S. 241, 244-245, n. 4 (1967).[4] Although the District court may have intended its judgment of dismissal to be without prejudice to the right of appellants to litigate their federal claims in federal court at the conclusion of the state proceeding, the court did deny appellants' motion for an amendment to the judgment making clear that no prejudice would attach. The motion should have been granted. Accordingly, we vacate the judgment of the District court and remand the case for proceedings consistent with this opinion.

[4] "It is better practice, in a case raising a federal constitutional or statutory claim [where the doctrine of abstention is applied], to retain jurisdiction, rather than to dismiss...." *Zwickler, supra*, at 244, n. 4. *American Trial Lawyers v. N. J. Supreme Court*, 409 U.S. 467, 469 (1973).

E. Reasons For Granting The Petition

Dismissal with prejudice as punishment for petitioners' *pro se* complaint's failure to meet unspecified and undefined rigid Rule 8 standards [2] cannot be squared with the wording and plain meaning of

1. the Science and useful Arts clause of Art. I, § 8, Cl. [8] of the Constitution (App., A10).
2. the exclusive Right clause of Art. I, § 8, Cl. [8] of the Constitution (App., A10).
3. Rules 1, 7(a), 8, 12(b)(6), 15, 38, 39 and 56 (App. A17-A19).
4. the interstate commerce and foreign trade provisions of Art. I, § 8, Cl. [3] of the Constitution and with the Sherman Act, 15 U.S.C. §§ 1,2, and the Clayton Act, 15 U.S.C. § 15 (App., A10-A12).
5. the right to a trial by jury set forth in the Seventh Amendment (App., A11).
6. the more than 800 cases following this Court's ruling in *Conley v. Gibson*, 355 U.S. 41, 48.
7. this Court's ruling in *Foman v. Davis*, which states as follows:

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[2]See Footnote [1] at page 3, *supra*.

> Federal Rule of Civil Procedure declaring that leave to amend shall be freely given when justice so requires is mandate to be heeded ... Leave to amend complaint should be freely given in absence of any apparent or declared reasons such as undue delay ... *Foman v. Davis*, 83 S.Ct. 227, 228 (1962).

8. 18 U.S.C. § 3231, which states that "[t]he district courts of the United States shall have original jurisdiction, exclusive, of the courts of the States, of all offenses against the laws of the United States". Since patents are granted by the U.S. Government under constitutional authority, patent interference, harassment, hindrance, destruction and extortion are reasonably within the meaning of "offenses against the laws of the United States."

The deliberate, persistent, and continued destruction by respondents of petitioner's patents does not appear to be supported in the case law, as far as petitioners can determine. Respondents had no granted, implicit, inherent, or legislated right to use acts of forgery, theft, theft by deception, theft and/or larceny, restraint of trade, mail fraud, wire fraud, bank fraud, or extortion to wilfully and maliciously interfere, harass or hinder petitioner in the exclusive use of his patents.

The novelty of the issues raised – the willful destruction of patents, patent extortion, conspiracy to prevent petitioner from exercising his exclusive right to his patents, conspiracy to use acts of patent interference and destruction in furtherance of extortion – calls for this Court to restate the public policy relating to the promotion of Science and useful Arts by fostering or aiding, and not hindering or destroying, the patents issued to American citizens, thereby maintaining

the existing public policy of stimulating interstate commerce and foreign trade and a favorable balance of trade with other nations.

The lower court's reliance on Rule 8 and the *Colorado River* Abstention Doctrine in dismissing with prejudice petitioners' complaint, in opposition to the Constitution and to the authority of the Congress to enact federal statutes, swallows up Rules 1, 7(a), 12(b)(6), 15(a), 38(a), 39(a) and 56, the First, Fifth and Seventh Amendments, and Art. I, § 8, Cl. [3], [8].

The appeals court's summary affirmation of the lower court, without providing a written opinion, covers up respondents' multiple anticompetitive offenses and continues for an unspecified and apparently limitless duration the harsh punishment of petitioners, the victims of respondents' patent harassment and destruction, antitrust and civil RICO racketeering anticompetitive offenses against two existing and three new businesses, as set forth in the complaint, in opposition to Rule 1 and the more than 800 cases following this Court's ruling in *Conley v. Gibson* that no complaint should be dismissed unless there can be found no claim for which relief can be granted.

The appeals court's summary affirmation of the lower court appears to discriminate against *pro se* petitioners, hinders the effective administration of the law, and interferes with the intended application of constitutional and statutory provisions in that it denies petitioners their right to a jury trial of

1. their claims of respondents' patent interference, harassment, hindrance, destruction, and extortion.
2. their civil antitrust claims of respondents' injury to petitioners' business and property in manufacturing,

marketing, sales, and distribution of their patented products.

3. their civil antitrust claims of respondents' invasion and control of petitioners' businesses.

4. their civil antitrust claims of respondents' frustrating petitioners in their entering their 3 new businesses.

5. their civil antitrust claims of respondents' invasion of and control over and frustrating petitioners in their operating their two existing businesses.

6. their civil antitrust claims of respondents' continuing exercise of monopoly control of their businesses.

7. their anticompetitive civil RICO claims.

8. the deprivation by respondents of petitioner's constitutional right to his "exclusive Right" to his patents.

9. the deprivation of petitioners' civil rights.

The appeals court's summary affirmation of the lower court would appear to be not well-grounded in established constitutional and legal principles in that it swallows up Art. VI, Cl. [2], the Seventh Amendment, and Rule 1 of the FRCP and is at war with the plain meaning and the spirit of the Federal Rules of Civil Procedure which heavily favor a trial on the merits, in this case a trial by jury.

A clear constitutionally vested directive, that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States" and that "[t]he Congress shall have Power To promote the Progress of Science and useful Arts" properly subjects Rule 8 to this constitutional directive, to the constitutional amendments, to existing federal laws, and to the preponderance of at least 822 cases citing the *Conley v. Gibson* ruling and the cases citing the *Foman v. Davis* ruling.

When viewed in this light, Rule 1, the "greatest" rule, easily, clearly and completely swallows up Rule 8. To do

otherwise would be to leave Rule 8 totally supreme over the Congress' constitutionally vested Powers, over Rule 1, and totally at war with the Constitution and the Congress' authority granted under Art. I, § 1 and, therefore, it would appear that Rule 8 would be unconstitutional.

Thus, when dealing with patent and antitrust issues, Rule 8 would appear to be constitutionally checked and balanced to its plain meaning as a compliance rule, not as a punishment rule, and not to supersede the legislative Powers constitutionally vested in the Congress to grant a trial by jury for trying patent, antitrust, and anticompetitive RICO offenses according to Rule 1. Further, it would appear that Rule 8 was not designed as an instrument to deny a trial by jury.

This Petition For Writ Of Certiorari is made from the perspective of asking this Court to "just say NO" to respondents' demands in the lower courts for special cover-up privileges of their white collar crimes of multiple acts of forgery, fraud, misrepresentations, theft by deception, patent extortion, mail fraud, and other predicate acts against *pro se* inventor and entrepreneurs, as used in respondents' patent interference, harassment, hindrance and destruction, civil antitrust offenses, anticompetitive RICO offenses, and civil RICO extortion offenses, by granting a writ of certiorari in the interest of accessible equality of justice for all under an equal application of Rules 1, 7(a), 8, 12(b)(6), 15(a), 38, 39 and 56:

1. That the Creator endowed all men with the right to life, liberty, and the pursuit of happiness by allowing the inventor the implied freedom to participate and give in

promoting Science and useful Arts.[3]

2. That the framers established the Constitution to establish justice and promote the general welfare and secure the blessing of liberty to themselves and to their posterity[4] in Science and the useful Arts, in commerce, assuring participation in free and open markets, and in access to a trial by jury.

3. That the framers stated "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states"[5], free of overextended judicial creations, such as, the *Colorado River* Abstention Doctrine and of overextensions of Rule 8 to swallow up a *pro se* inventor's rights under Rule 1 to a "just, speedy, and inexpensive determination of every action" dealing with patent offenses, civil antitrust offenses, civil RICO racketeering anticompetitive offenses, and contracts under international treaties, over which Congress granted original jurisdiction to the district courts, exclusive of the state courts.

4. That the framers vested all legislative power in the Congress and granted to Congress the power to "promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"[6] by providing "Equal Justice For All" by means of access to trial by jury, "both as to law and fact", to ensure that the citizens of each state, such as, *pro se* inventors, have access to the district courts to have patent, civil antitrust, and civil RICO racketeering

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[3] Declaration of Independence

[4] *Id.*

[5] Constitution of the United States of America

[6] *Id.*

anticompetitive offenses and international treaty issues tried in the court to which Congress granted exclusive jurisdiction, thereby excluding the state courts from trying such offenses and issues. For the lower courts to ignore these established constitutional principles, by improper use of judicial discretion to swallow up and circumvent the plain meaning of the Constitution, of the laws enacted by the Congress, and of the FRCP written by this Court and approved by the Congress, would appear to fly in the face of Art. VI, Cl. [2] and [3].

5. The remarkable technological advances of the past three centuries, described in Parts B and C, *supra*, were fueled by the framers' vision and leap of faith to clearly charge the Congress with the duty to (1) regulate interstate and foreign commerce, (2) promote the Progress of Science and useful Arts, (3) secure to Inventors the exclusive Right to their Discoveries, and (4) make all Laws necessary for executing the Powers granted to the Congress.

6. These technological advances were also fueled by the framers' vision to clearly charge the Judicial Branch with (1) appellate jurisdiction, (2) a specific definition of the supreme Law of the Land, and (3) loyalty to the Constitution.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Court to GRANT the petition for writ of certiorari.

Respectfully submitted this 22nd day of October, 1996.

LAURA A. BROWN, *Pro Se,* Petitioner
J. GALE BROWN, *Pro Se,* Petitioner
20205 State Line Road, Harvard, Illinois 60033
Telephone: (815) 943-7539

APPENDIX

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UNITED STATES COURT OF APPEALS *hlr*
For the Seventh Circuit
Chicago, Illinois 60604

June 19, 1996

Before

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

LAURA A. BROWN and J. GALE BROWN, Plaintiffs-Appellants,	] Appeal from the United States District Court for the Northern District of
No. 96-1660 v.	] Illinois, Western Division.
FIRST STATE BANK OF HARVARD, FCC NATIONAL BANK, BANK ONE, ROCKFORD, et al., Defendants-Appellees.	] No. 94 C 50187] Philip G. Reinhard, Judge.

The following is before the court:

7. **MOTION BY CERTAIN APPELLEES TO DISMISS APPEAL AS FRIVOLOUS**, filed on April 1, 1996, by counsel for the appellees.

8. **APPELLANTS' RESPONSE TO**

MOTION BY CERTAIN APPELLEES TO DISMISS APPEAL AS FRIVOLOUS, filed on April 15, 1996, by the pro se appellants.

9. **BRIEF OF APPELLANT J. GALE BROWN**, filed on May 28, 1996, by the pro se appellant.

10. **BRIEF OF APPELLANT LAURA A. BROWN**, filed on May 21, 1996, by the pro se appellant.

The court, on its own motion, summarily **AFFIRMS** the district court. Accordingly, #1 is **DENIED** as moot.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge: PHILIP G. REINHARD
Case Number: 94 C 50187 Date: November 27, 1995
Case Title: Brown, et al. v. First State Bank of Harvard, et al.
Motion: Defendants' motions to dismiss.

DOCKET ENTRY: For the reasons stated in the attached order, the court grants defendants' motions to dismiss with prejudice and dismisses this cause in its entirety. All pending motions dismissed as moot except the motion for sanctions under Rule 11 which proceeds as a matter collateral to the disposition of this case.

/s/_____
PHILIP G. REINHARD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

LAURA A. BROWN, J. GALE BROWN, et al.	)	
Plaintiffs,	)	
v.	)	No. 94 C 50187
FIRST STATE BANK OF HARVARD, et al.	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs, Laura A. Brown and J. Gale Brown, filed, pro se, a second amended complaint against First State Bank of Harvard and numerous other defendants alleging a variety of civil antitrust, civil RICO racketeering, Truth in Lending Act, and other civil and tort counts. The second amended complaint is 249 pages long and consists of 41 counts. It also incorporates numerous allegations from plaintiffs' first amended complaint which was previously dismissed under Rule 8 in part because of its prolixity, redundance and verbosity (see order dated August 17, 1995).

All defendants have moved to dismiss the second amended complaint with prejudice as violative of Rule 8. Several other defendants have also sought dismissal under the Colorado River doctrine, contending that this same matter is presently being litigated in the Circuit Court of McHenry County, Illinois. Plaintiffs, in turn, have filed 7 briefs in response to the motions to dismiss totalling 111 pages, not counting exhibits thereto.

1) Rule 8

In its prior order of August 17, 1995, dismissing plaintiffs' first amended complaint under Rule 8, this court granted plaintiffs 21 days to file a second amended complaint. In doing so, the court expressly cautioned plaintiffs to strictly adhere to Rule 8 and to avoid "unnecessary factual detail, redundancy, conclusions, arguments and verbosity." Because plaintiffs had already filed two complaints, the court further cautioned plaintiffs that it would give serious consideration to dismissing a subsequent complaint with prejudice should it continue to violate Rule 8, citing Viacom, Inc. v. Harbridge Merchant Ser., Inc., 20 F.3d 771, 776 (7th Cir. 1994).

The court will not reiterate here the requirements of Rule 8. Suffice it to say that plaintiffs' brief falls far short of compliance with Rule 8 and runs afoul of this court's August 17 order. The court has exhaustively read the second amended complaint and finds it to be redundant, prolix, verbose and riddled with unnecessary and confusing factual detail. As such, the court dismisses the second amended complaint as violative of Rule 8. Furthermore, it does so with prejudice.

While the court is not inclined to dismiss a complaint with prejudice under rule 8 and is cognizant of the need to view complaints liberally, especially those of pro se plaintiffs, there are certain circumstances that justify such an extreme measure. See Viacom, 20 F.3d at 776. Such circumstances are present here. Plaintiffs, even after specific direction from the court as to Rule 8, have continued to submit a complaint that renders it virtually impossible for defendants to respond and for this court to conduct orderly litigation. Accordingly, the court dismisses the second amended complaint with prejudice.

2) Colorado River doctrine

Under the doctrine of Colorado River Water Conservation District v. United States, 424 U.S. 800, 818 (1976), a federal court may stay or dismiss a suit in exceptional circumstances when there is a concurrent state proceeding and the stay or dismissal would promote wise judicial administration. Caminiti and Iatarola, Ltd. v. Behnke Warehousing, Inc., 962 F.2d 698, 700 (7th Cir. 1992). The court must first determine whether the two proceedings are parallel (not identical). Suits are parallel when substantially the same parties are contemporaneously litigating substantially the same issues. Id.

In the present case, plaintiffs have added numerous defendants to the case in this court different from the parties in state court. However, this fact alone is insufficient to preclude a finding that the suits are parallel in light of the substantially same issues in both proceedings. Even though plaintiffs have introduced numerous allegations as to civil antitrust, RICO, Truth In Lending Act and other civil claims, the essence of their second amended complaint here is their assertion that the foreclosure proceeding in state court is improper because of their d recission of certain loan agreements under the Truth in Lending Act claim. That is the gist of their litigation in the state court, a matter that remains pending there. This is so notwithstanding plaintiffs bringing numerous additional parties into the federal fray. Introduction of additional parties via a complaint violative of Rule 8 will not serve to render the proceeding here non-parallel to the one in state court.

Additionally, the court finds the balance of the ten factors under Colorado River, when viewed in their totality, to favor dismissal in this case. See Caminiti, 962 F.2d at 701.

While some of the factors such as the state court's assumption of jurisdiction, the inconvenience of the federal forum, the availability of removal and the presence or absence of concurrent jurisdiction do not point one way or the other, the remaining factors favor dismissal. It is desirable to avoid the piecemeal litigation that will result from the essentially duplicative matters raised here. Further, the state court proceeding was initiated several years before the federal case and has progressed much further. Further, the law governing the essence of the dispute, whether plaintiffs have been properly foreclosed upon, is one of state law. While the Truth in Lending Act issues are federal, they are matters which the state court is equally capable of disposition. Similarly, the state court action is adequate to protect plaintiffs' rights. Lastly, when the court reads plaintiffs' second amended complaint and their briefs in opposition to the motions to dismiss, it gets the strong sense that plaintiffs are maintaining federal claims simply to collaterally attack the First State Bank of Harvard's efforts in the state court foreclosure action. This, of course, strikes at the very heart of the Colorado River doctrine. When these factors are viewed collectively, the court finds they weigh in favor of this alternate ground for dismissal of this proceeding.

For the foregoing reasons, the court dismisses plaintiffs' second amended complaint with prejudice.

ENTER:

/S/_____
PHILIP G. REINHARD, JUDGE
UNITED STATES DISTRICT COURT

DATED: November 27, 1995

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge: PHILIP G. REINHARD
Case Number: 94 C 50187 Date: December 20, 1995
Case Title: Brown, et al. v. First State Bank of Harvard, et al.
Motion:

DOCKET ENTRY:

X Status hearing held

X (Other docket entry) Plaintiffs' motions to alter or amend judgment under Rule 59(e) [#191, #193, #194, #195] are denied. Plaintiffs' oral motion to stay ruling on pending motions for sanctions is denied. Defendants to submit any memorandum in support of pending motions for sanctions by January 10, 1996. If motions are to be withdrawn, counsel for defendants to contact the court. Plaintiffs' response to any memorandum in support due January 31, 1996. Defendants' reply due February 7, 1996.

/s/
PHILIP G. REINHARD

UNITED STATES COURT OF APPEALS er
For the Seventh Circuit
Chicago, Illinois 60604

July 19, 1996

By the Court:

LAURA A. BROWN and J. GALE BROWN, Plaintiffs-Appellants,	] Appeal from the United] States District Court for] the Northern District of] Illinois, Western
No. 96-1660 v.	] Division.
FIRST STATE BANK OF OF HARVARD, FCC NATIONAL BANK, BANK ONE, ROCKFORD, et al., Defendants-Appellees.	] No. 94 C 50187] Philip G. Reinhard,] Judge.

Upon consideration of the **"MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING"** filed on July 2, 1996, by counsel for the plaintiffs,

IT IS ORDERED that the motion is **DENIED**.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The Constitution of the United States:

Art. I, § 1 - All legislative Powers herein granted shall be vested in a Congress of the United States...

Art. I, § 8, Cl. [3] - The Congress shall have Power To regulate commerce with foreign Nations, and among the several States...

Art. I, § 8, Cl. [8] - The Congress shall have Power To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Art. I, § 8, Cl. [18] - The Congress shall have Power To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Art. III, § 2, Cl. [1] - The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...

Art. VI, Cl. [2] - This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land...

Art. VI, Cl. [3] - [a]ll ... judicial Officers, both of the

United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution...

Amendments to the Constitution:

First Amendment - Congress shall make no law ... abridging the freedom of speech [or expression] ...; or the right of the people ... to petition the Government for a redress of grievances.

Fourth Amendment - The right of the people to be secure in their ... papers, and effects, against unreasonable ... seizures, shall not be violated...

Fifth Amendment - ...nor shall private property be taken for public use, without just compensation.

Seventh Amendment - In Suits at common law ... the right of trial by jury shall be preserved...

Federal Statutes:

Sherman Anti-Trust Act - 15 U.S.C. § 1

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony...

Sherman Anti-Trust Act - 15 U.S.C. § 2

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony...

Clayton Act (Section 4) - 15 U.S.C. § 15

...any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit...

Hobbs Act - 18 U.S.C. § 1951(a)

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined...or imprisoned...

Racketeer Influenced And Corrupt Organizations (RICO) Act - 18 U.S.C. § 1961 - Definitions

As used in this chapter–

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robber, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... section 1341 (relating to mail fraud), section 1343 (relating to wire fraud, section 1344 (relating to financial institution fraud), ... section 1951 (relating to interference with commerce, robbery, or extortion), section 1962 (relating to racketeering), ...

Racketeer Influenced And Corrupt Organizations (RICO) Act - 18 U.S.C. § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce...

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Racketeer Influenced And Corrupt Organizations (RICO) Act - 18 U.S.C. § 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restriction on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the

same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

District Courts - 18 U.S.C. § 3231

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the states, of all offenses against the laws of the United States.

Commerce and Antitrust Regulations - 28 U.S.C. § 1337(a)

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

Patents, Plant Variety Protection, Copyrights, Mask Works, Trade-marks, and Unfair Competition - 28 U.S.C. § 1338(a)

> The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights, and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

Civil Rights Act of 1964 - 42 U.S.C. § 1983. Civil action for deprivation of rights.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress...

Civil Rights Act of 1964 - 42 U.S.C. § 1985(3) - Depriving person of rights or privileges.

> If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal

> protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Federal Rules of Civil Procedure:

> Rule 1. Scope and Purpose of Rules
>
> These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity ... They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 7. Pleadings Allowed. (a) Pleadings. There shall be a complaint and an answer...

> Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain ... (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(e) (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

Rule 12. Defenses and Objections

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... (6) failure to state a claim upon which relief can be granted...

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served ... Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be

freely given when justice so requires...

Rule 38. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

Rule 39. Trial by Jury or by the Court

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

Rule 56. Summary Judgment

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

EXCERPTS FROM *PATENT LAW: LEGAL AND ECONOMIC PRINCIPLES*,
by John W. Schlicher
Release #3, September 1995

a If someone said, "Patent law is a fundamental part of the American economic system," most people would regard that view as an eccentric one held by an odd patent lawyer or two. However, Madison, Jefferson, Franklin and the other founders would not have thought it strange to consider patent law important to the future of the United States. The founders provided Congress with specific powers identified in seventeen short phrases of Section 8 of the Constitution. Congress was given the power to tax, pay debts, provide for the common defense, borrow, regulate commerce with foreign countries and among the states, coin money, punish the counterfeiting of money, establish post offices and post roads, secure exclusive rights to inventors, establish courts inferior to the Supreme Court, punish piracy, declare war, provide an army and navy, and do a few other things. (U.S. Const., art. I, § 8) The founders gave Congress those powers because they were important and appropriate for the federal government. One such power was to secure to inventors for a limited time exclusive rights to their discoveries. (U.S. Const., art. I, § 8, cl 8) The purpose of that power was "[t]o promote the progress of Science and useful Arts...." There seems to have been almost no disagreement among those

who drafted the Constitution that Congress should have the power to establish a patent system. At vii.

b According to Madison's journal of the debates, the patent power was proposed on September 25, 1787 and was unanimously agreed to by the delegates on the same day. (Documents Illustrative of the Formation of the Union of the American States, H.R. Doc. No. 398, 69th Cong., 1st Sess. 665-67 (1927)) If there was any debate on the subject, Madison did not record it. In Federalist No. 43, Madison simply said, "[t]he utility of this power will scarcely be questioned." (Alexander Hamilton, James Madison and John Jay, *The Federalist Papers* 217-18 (Bantam ed. 1982)) Patent rights and copyrights were useful because "[t]he public good fully coincides in both cases, with the claims of individuals." At vii.

c The founders thought patent law was important and appropriate for the federal government. Congress exercised the patent power within three years after ratification. Patent laws existed throughout the period during which America achieved the highest state of technical achievement and the highest standard of living in the history of mankind. Today, the preeminence of American technology is not a foregone conclusion. There are serious questions about the ability of America' productivity gains to outpace those of its international rivals and to keep up with

government spending. For those and other reasons, patent law is receiving a level of attention by businesspeople, lawyers, and lawmakers that would have been unimaginable twenty years ago. At viii.

COVER FROM AUSTRALIAN PATENT 591633
Issued April 12, 1990, to Petitioner J. Gale Brown

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To all to whom these presents shall come Greeting:

WE DO, by these Letter Patent, give and grant to the person whose name is specified hereunder Our Special License and the exclusive right, subject to the laws in force from time to time in Australia or a part of Australia, by that person, that person's agents and licensees, at all times during the term of these Letters Patent, to make, use, exercise and vend throughout Australia the invention the title of which is specified hereunder and being the invention that is fully defined in the claim or claims of the complete specification accepted in accordance with the **Patents Act 1952** in such manner as that person thinks fit, so that that person shall have and enjoy the whole profit and advantage accruing by reason of the invention during that term.